SYNOPSIS

Channelization of social media through cyber law and its enforcement challenges in india

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INTRODUCTION

Social media here covers all types of electronic media.The development of the internet was in many ways radically different than the advent of any previous sets of innovative communications technologies. Certainly, the internet was similar in simply making it much easier than before to express and communicate information and ideas to others. It also however brought new features that not only broke down a host of boundaries between forms of personal and mass communication, but also overturned a mass media model that had endured for centuries.[1] The current communications revolution gave content recipients the opportunity to be their own content producers. From simple beginnings, such as the ability to post text or images on personal web pages, user generated content has become an extraordinary global flood of mixed original and re-used content that appears in a multitude of forms and manners.[2] These now notably include video posting, social networking, blogging, tweeting etc. Collectively it has been termed as social media.

Part of the new generation of Web 2.0 applications, social media is a catch phrase that describes technology which facilitates interactive information, user-created content and collaboration.[3] Hailed for their democratizing influence and enthusiastically embraced by millions of people across the world, social media typify the new shape of the internet. It is characterized by collaboration with users generating their own content and websites that succeeded by 'harnessing collective intelligence'.[4] Social media includes variety of internet based communication mediums such as:

- Social Networking Websites (i.e. Facebook, MySpace, Google + etc.)
- Micro blogging websites (i.e. Twitter, Weibo, Yammer etc.)
- Video sharing websites (i.e. Youtube, Flickr, etc.)
- Macro blogging website (i.e. Wordpress, Blogger, Blogspot etc.)
- Podcast
- Wikis

1 Perry Keller, 'European and International Media law' (1st Pub, Oxford University Press 2011) 50
2 OECD, 'Participative Web and User Produced Content: Web 2.0, Wikis and Social Networking' (1 st Pub, OECD Publishing 2007) 14
3 Prashant Sharma, 'Core Characteristics of Web 2.0 Services' (Tech Pluto Staff, 28 Nov. 2008) accessed 23 February 2013
4 Jan Rylich, 'Buzzword 2.0 The (R)Evolution of The Web' (2008) 2 MASARYK U. J.L. & Tech. 177

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Although there is no universally accepted definition of social media yet there has been no difference of opinion about its forms and what it includes and what not. In simple words, social media are web based tools, sites and services that provide users with dynamic ways to interact create and share in read/write web culture, where users are also producers and interaction and participation is encouraged.[5]

Social media exhibits unique characteristics when compared to 'traditional' media forms. Its speed and scope means that once content is published it is available instantaneously, to a potential global audience. The use of social media spans across all profession and ages. Social media is not only changing the way we communicate with friends but dramatically changing the way we work as well. Social network like Facebook, twitter and LinkedIn as well as blogs and wikis and other virtual communities offer new ways to engage customers and build stronger relationships. Marketing savvy companies are finding creative ways to use social media to promote their products and services and enrich their brand. Social media sites have transformed society on both a micro and macro level by enabling perpetual communication.[6] On the micro level, individuals are able to keep track of their friends and family on a daily basis. People can upload pictures, offer commentary on a topic of their choice, or voyeuristically view the activity of others. Data contained within social network sites may assist law enforcement in gathering timely information in furtherance of crime prevention, preservation of public order, and the investigation of criminal activity, including suspected terrorist activity.[7] The technological affordances and communication dynamics of social media can help citizens disseminate information and reach the international community; and it can make it more difficult for repressive regimes to quell citizen's free speech. Social media has been hailed as the long awaited set of applications that will enable "Athenian style direct democracy", where every citizen is connected to the state and can participate directly in policy making.[8] The Narendra Modi prime minster ship campaign in India and Barack Obama presidential campaign in the U.S. is widely recognized for its innovative user of interactive communication tools including social networks, user content sites and websites to enable direct engagement between volunteers/voters and the campaign/candidate.

With new forms of 'social media' already playing an increasingly significant role in human interaction, a new phenomenon, often referred to as the "social media revolution," has greatly impacted political dynamics on a global scale. It is important, however, to emphasize that while there is much attention paid to the technological dimensions of social media as an agent of change, it is still the individual man who remains at the center. The Arab Spring[9] of 2011 has just made the transcending national borders and connecting like-minded individuals within milliseconds more evident with new forms of interaction facilitated by social media which holds the power to shake the foundations of government itself.

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5 Robert Bodle, 'Social Media and Global Internet Governance: Innovations and Limitations' (Fourth Annual GigaNet Symposium, Sharm-El Sheikh, Egypt 14 November 2009)

6 Alexandra Paslawsky, 'The Growth of Social Media Norms and Governments' Attempts At Regulation' (2011-12) 35 Fordham Int'l L.J. 1485

7 NYPD, 'Use of Social Networks for Investigative Purposes – General Purpose' (Public Intelligence, 09 May 2012) accessed 03 January 2013

8 Anand Giridharadas, 'Democracy 2.0 awaits an upgrade' (New York Times, 11 September, 2009) accessed 10 January 2013

9The Arab Spring, also known as the Arab Revolution is a revolutionary wave of demonstrations and protests occurring in the Arab world that began on 18 December 2010

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The social media revolution has brought a wealth of new possibilities for individual communication and media participation, which in turn has greatly expanded the possibilities for personal autonomy. That has undoubtedly been the experience of many active participants. Even for those individuals who do not actively participate, their sense of autonomy is often increased simply through access to information made available by others.

The emergence of social media has demonstrated that there are a lot of complicated legal issues pertaining to it. These legal issues range from variety of issues-

1. there are complicated and technical legal issues not only relating to the user generated content or third party data that is generated by subscribers on the social networking sites but also with other related aspects.
2. Issues pertaining to the ownership of the said data are still not clear.
3. There are issues relating to violation of privacy as well as freedom of expression.
4. Issues relating to freedom of expression, privacy rights and defamation are very overlapping. The exercise of one right may result into invasion of other rights.

AIMS AND OBJECTIVES OF THE STUDY

The present study seeks to explore the linkages between the legislative regulatory gaps and the slow response of the justice delivery system particularly with regard to mechanisms of investigative procedure of social media mischief and judicial process which is witnessed on day to day court proceedings. The research concentrates on those laws and regulatory framework covering rules and principles which relate primarily to the laws governing social media. The research seeks comparative analysis of regulatory framework with other legal systems. In this context the present research work ventures to-

- Locate the governing laws and regulatory bodies in India and make a critical analysis of their effectiveness in dealing with the problems generated by social media.
- To study the extra territorial jurisdiction of a legal system in case of social media offences committed outside a state`s territory.
- Critically analyze the social media regulatory approaches in U.S. and U.K. and make a comparative analysis with India.
- To study the global internet governance regime and to critically analyze its implications for social media.
- Propose suggestions in various legal provisions to remove the lacunae, to plug the loopholes and to make it more effective and make recommendations for strengthening the efficacy of existing legal mechanism for achieving the desired results in the changing Indian society

RESEARCH QUESTIONS

In order to prove the hypothetical claim, the research focuses on the following issues-

- What are the problems generated by social media and what is the regulatory structure in India to address these problems?
- Whether there is any effective mechanism to address the extra territorial offences?
- Whether the legal & regulatory framework prevailing in other countries particularly in U.K. and U.S.A. can be adopted in India?

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- What possible changes are required in the current Indian legal framework in consonance with U.K. and U.S.A. regulatory mechanisms in view of social/political milieu in India?
- Should international policy makers and organizations concerned with internet governance and communication technology embrace social media as tools for achieving these ends? If so, how should social media fit into broader context of promoting information and communication technology

HYPOTHESIS

- The social media regulatory mechanism in india is more submersive & ineffective which failed to address the challenging issues of new communication medium witnessed in various incidences of social media mischief.
- To analayse what measures are required for effective mechanism of crime on social media nationally and internationally.
- To suggestly measures for making more strong and effective mechanism so that crime on social media must be regulated efficiently.
- To meet the extra terriotorial jurisdiction system more efficient for reduction of crime on through social media.

RESEARCH METHODOLOGY

The study of each research problem demands its own appropriate technique, but there is always interdependence of various tools used in a research design. Studies relating to existing legal and regulatory framework of social media are necessarily complicated and involve and in-depth understanding of the nature and scope of the relevant laws. The methodology adopted for the research is doctrinal, analytical and descriptive.

For the purpose of convenience and better understanding, research has been conceptualized into two basic facets. Firstly, a descriptive study of existing legal framework in Indian context is adopted and then research gives some suggestive measures on the basis of analysis of comparative dimensions. In order to make the study more realistic and functional, it was found indispensable to do some case studies. Case studies mainly aim to provide an insight of a particular situation which was necessary to understand in the case of some major social media mischief in India.

The research mainly focuses on the primary sources like Statutes and Research Committee Reports and secondary sources like books, articles, journals, pending/decided cases, case controversies and news in magazines/web portals/news papers and websites. Oxford Standard for the Citation of Legal Authorities (OSCOLA) referencing method, 4th edition, has been used in the thesis.

REVIEW OF LITERATURE

The proposed research is stipulated on a topic whose history is not more than a decade old. The development of social media in the wake of information technology in our daily lives is less than a decade old and accordingly the growing challenges as to the legal issues concerning social media also being not much older. It is in the backdrop of this fact that the literature review of present research has got to be appreciated and understood. Literatures pertaining to social media regulation of other legal systems have also been explored.

In the past one decade Social Media has became an alternative and a weapon for common mass to disseminate information and share their views on a given theme. World has witnessed the power of

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Social Media in the form of Arab uprisings which led to overthrowing of established regimes in various countries. To better understand these emerging dynamics, **the Liechtenstein Institute on Self-Determination** convened a workshop and panel discussion focusing on social media in April 2011. In the resulting Report[10] , participants analyze the impact of digital tools, social networking, and the Internet in the coordination of democratic movements against authoritarian states, with a specific focus on the Middle East and North Africa.

A book by on '**Facets of Media Law**'[11] by **Madhavi Divan** deals with constitutional issues and other subjects like contempt of court, privileges of legislatures and the right to information, which have significant contemporary relevance. The views expressed by author on diverse subjects are marked by originality and an incisive study of the ramifications of those subjects. The book thoroughly discusses subjects like decency, morality and privacy in media age.

A book titled '**Law and the Technologies of the Twenty-First Century**'[12] provides a contextual account o the way in which law functions in a broader regulatory environment across different jurisdictions. It identifies and clearly structures the four key challenges that technology poses to regulatory efforts, distinguishing between technology as a regulatory target and as a tool, and guiding the reader through an emerging field that is subject to rapid change. By extensive use of examples and extracts from the texts and materials that form and shape the scholarly and public debates over technology regulation, it presents complex material in a stimulating and engaging manner.

Narendra Arya in his book on '**Social Media**'[13] has dealt with several issues regarding social media. In the chapter 2 of the book author has made a detailed analysis to suggest that social media is not replacing the traditional mode of journalism. It suggests that traditional journalism and social media both can run together. However, author accepts this fact that that old ways to journalism is changing and those journalists who refuse to accept the change they will soon be wiped out from the field. In other chapters of the book author has talked about Citizen Media, Community Media, Participatory Media and Citizen Journalism. Though this book provides a clear idea about social media but theme of the writing is centric to kinds of media. Neither the legal perspectives of social media have not been discussed nor are abuses of social media discussed.

In '**Internet Law**'[14] the author takes a global view of fundamental legal issues raised by the advent of the internet as an international communications mechanism. This new title helps the reader to understand the approaches and analytical methods that a lawyer requires when dealing with internet related issues and explains the problems that every country`s law will need to resolve. The book integrates legal and other materials to support the discussion of how technological, economic and political factors are shaping the law governing the internet. Global trends in the development of these legal issues are addressed and the effectiveness of potential mechanisms for legal change that are applicable to internet law are also examined.

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10 Liechtenstein Institute on Self-Determination, 'Social Media Revolutions: All Hype or New Reality?' (1st Pub, Spring 2011)
11 Madhavi Goradian Divan, 'Facets of Media Law' (Reprint, EBC, 2010)
12 Roger Brownsword, 'Law and the Technologies of the Twenty-First Century' (1st Pub, Cambridge University Press 2012)
13 Narendra Arya, 'Social Media' (1st edn., Anmol Publications Pvt. Ltd. 2011)
14 Chris Reed, 'Internet Law' (2nd edn, Cambridge University Press, 2004)

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In relation to freedom of speech and expression over the social media a book titled '**Free Speech in the New Media**'[15] edited by Thomas Gibbons is an important document. The book is collection of some qualitative research works done on the theme of free speech in social media. Part I of the book is related to research works on free speech and converged media. Editor has collected 5 articles in this chapter. Part II of the book relates to public service broadcasting. Part III of the book is related to collection of articles on content standards. In this part there are essays on beliefs, indecency, advertising and content regulation in the European community.

A book titled '**Regulating the Changing Media: A Comparative Study**'[16] edited by David Goldberg et al. assess the effects of changing technologies on the capacities of law to regulate the media and, in particular, to examine the extent to which it remains possible for governments and other public authorities to shape the changing media in such a way as to ensure that important social values are not neglected. In this book the capacity of radically different legal and administrative systems to cope with fast moving and radical change is compared with the aim of understanding more about law, regulation and the media. The adoption of electronic commercial transactions has facilitated corss border trade and business, but the complexity of determining the place of business and other connecting factors in cyberspace has challenged existing private international law. This comparison of the rules of internet jurisdiction and choice of law as well as online dispute resolution has been discussed in 'Internet Jurisdiction and Choice of Law.

SIGNIFICANCE OF THE STUDY

The existing social, political and legal scenario requires a depth understanding of the current situations generated by the social media. No in-depth study in Indian context has so far been undertaken. The present study is a humble attempt to ascertain the various nuances of the new theme which is highly challenging for the regulatory authorities. Various unfettered power that has been bequeathed by the new communication technologies have been the central focal point of this research. It also tries to encapsulate the scattered regulatory regime in one fold and suggest the ways to effectively regulate the social media.

The study of the subject is of much practical importance in a democratic society like India where freedom of speech and expression is granted by the Constitution. With a few data surveys showing that India is the Fifth largest internet using country,[17] in the coming years it is presumed that Indian Internet Sector is going to boom and henceforth it is necessary that there should be some detailed research works to identify the forthcoming needs and lacunas in the Indian legal system, for it to be ready to deal with the fast growing new communication medium.

As well as it is very much necessary to deep study the crime on social media on international level by comparing and adopting the right means or suggestly measures taken to solve problem. By analysing facts on extra territorial jurisdiction so that the space on giving justice can be removed and minimised.

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15 Thomas Gibbons, 'Free Speech in the New Media' (1st edn., Ashgate 2009)

16 David Goldberg, Tony Prosser et al, 'Regulating the Changing Media: A Comparative Study' (1st edn, Cleardon Press, 1998)

17 Kcatoto, 'Social Media in India' (Techonzo, 24 January 2012) accessed on 14 July 2012

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LIMITATIONS OF THE STUDY

The present work imports and borrows the principles, doctrines, rules, regulations and laws in other developed legal systems particularly the practices in U.K. and U.S.A. The study should have included other legal systems in its ambit but that was not possible due to paucity of the resources and time. Hence, the territorial limits of the study are strictly limited to India with some comparative dimensions from U.K. & U.S.A. The study explores the possibilities of importing and transplanting the fundamental regulation and monitoring of social media as prevalent in these countries. These two legal systems have been chosen for the following reasons:

1. The Indian legal system has in fact borrowed its structure from British and American Legal Systems.
2. These two legal systems being more developed have proved to be a possible role model for Indian regulatory framework.
3. The governance models of these two systems are much more powerful and speedy than others.

The present work stands at the interface of the constitutional liberties and freedoms vis-avis controlling and monitoring the social media. There are changing values and notions and determinacy of constitutional freedoms/liberties and therefore they should be regulated through the changing social values and norms particularly in relation to controversies surrounding contents of the social media.

The focus and orientation of the present work is basically with regard to recent controversies in India and the emerging challenges in the Indian context. The comparative dimension of the study will facilitate a better understanding of contemporary emerging issues of governance of social media in Indian societal context. In the wake of the contemporary generation of Web-technology which multiplies the interactive scope of the social media, the present study explores the possibility of social media challenges. The history and growth of social media in India is roughly a decade old. Therefore the issues of governance and regulation of social media are primarily the controversies in the last Ten to Twelve Yrs.

This thesis does not cover the evidentiary aspects of social media contents. It also does not imbibe the principles of civil law applicable for social media problems.

RESEARCH GAP

A complete analysis of the literature review has produced following research gaps on the present research theme:

- Scarcity of current and contemporary literature which addresses the issues governing social media behaviour in India.
- Existing literature fails to appreciate the linkages between legislative & regulatory gaps and justice delivery system from social media perspectives.
- Changing social norms of internet governance at national & international level and an analysis of its implications for social media has been missing in the available literatures.
- Procedural complexities of Jurisdiction in case of legal challenge for offences committed over social media have also not been analyzed in the existing literature.

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CHAPTERISATION

The thesis has been divided into seven chapters. These chapters have been further divided in various heads and sub-heads for the purpose of better understanding and clarity. The chapter has been planned as follows:

Chapter 1 Introduction

The first chapter of the thesis gives a brief exposure of the emergence of social media as an effective tool of communication technology. The chapter introduces the advantages and disadvantages of this new communication medium. Further in the chapter, besides the aims and objectives, significance, hypothesis, methodology, review of literature, research gap and scheme of the chapters have been covered.

Chapter 2 Regulatory Mechanism before Social Media

This chapter heavily focuses on legal regulatory regime, which constitutes the bulk of regulation in India & other legal systems. The researcher in this chapter has discussed various problems generated by social media & how these problems are posing a very different set of challenges to the regulatory authorities

Chapter 3 Regulatory challenges before social media

In discussing the variation of problems, types of regulatory authorities and relevant laws in governing social media has also been discussed. An additional narrative discusses the moral and ethical guidelines for regulating the social media.

Chapter 4 Extra Territorial Jurisdiction and Social Media

This chapter takes into consideration the extra territorial jurisdiction of social media offences. Jurisdictional issues which can be regarded as the biggest problem in cyber space, have been discussed and analyzed with the U.S. and U.K. perspectives. Judicial role in recognizing the various issues and principles of jurisdiction has also been discussed. The chapter concludes that all the principles governing extra territorial jurisdiction are less satisfactory for want of an international treaty/convention.

Chapter 5 Global Internet Governance and Its Implications for Social Media

This chapter looks into the laws, policies, cases and regulatory framework governing social media in U.S. & U.K. to suggest the possible implications for India. A comparative analysis of the social media governance highlights that some of the measures taken in United States, and United Kingdom, particularly in the wake the some social media mischief, are not enough. The chapter concludes that it would be best suited to find a common agreement at the international level to adopt universal guidelines for regulation of social media. Attempts of state laws to regulate social media webs, which is transnational in character, is a futile exercise.

The chapter discusses the various approaches of global internet governance. Changing dimensions of internet governance with the transformation of ICANN into a global entity in late 2014 and consequential non-interference in its functioning by the United States has well implications for social media. This aspect which emerged during the course of research has been lately added by the researcher in the thesis. The chapter discusses the functioning of international bodies which are

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involved in internet governance. The chapter concludes that ITU can be assigned the task for global internet governance with multi stakeholder approach which will out the dominance of one country. This will help in recognizing a universal right to freedom of expression in social media.

Chapter 6 Judicial Approach in India

In the sixth chapter, an attempt has been made to discuss the various incidences of social media mischief happened in India and which highlighted the need to regulate the social media properly. The chapter also discusses the relevant judgements of the higher courts. Every incident has been categorically analyzed on the basis of its fact and role of regulatory authorities. This chapter concludes that the monitoring and regulation of social media should be through state agencies as well as through internet service 22 providers/social media companies. This comprehensive mode of monitoring and regulation will ensure a competing field that will ultimately result in better social media services.

Chapter 7 Conclusion and Suggestions

Concluding reflections in the last chapter dilate on the loopholes and lacunae in the existing laws in India. Various conclusions have been drawn on the basis of different aspects of the study. To make the law on the subject clearer, certain and effective some important submissions have been made under this chapter in the form of suggestions.

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